

HONORABLE TIFFANY M. CARTWRIGHT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

PHILLIP P. COMBS & JAMIE COMBS,
husband and wife,

Plaintiffs,

v.

NATIONWIDE INSURANCE COMPANY
OF AMERICA, a foreign corporation,

Defendant.

No.: 3:22-cv-5684-TMC

JOINT MOTION FOR EXTENSION OF
CASE DEADLINES FOR PARTICULAR
PURPOSES

NOTE ON MOTION CALENDAR:
October 11, 2023

I. INTRODUCTION

Pursuant to the Court's instruction and the local civil rules, the parties jointly request that the Court amend the case scheduling order to provide time to address new evidence Plaintiffs disclosed late in the discovery period and after the discovery deadline. Fed. R. Civ. P. 16(b); LCR 7(j); LCR 10(g); Dkt. # 25, p. 2:7-2:9. Good cause exists to amend the case schedule to complete the particular activities identified below and to change the trial date.

II. FACTUAL BACKGROUND

Plaintiffs supplemented their initial disclosures on September 12, 2023. At that date, the discovery cutoff was about two weeks later, on September 29, 2023. Dkt. # 25.

1 In their September 12 supplemental disclosures, Plaintiffs referred to three estimates
 2 by three contractors they had not previously disclosed. Plaintiffs attached one of the
 3 estimates to the initial disclosure but did not attach the other two. On October 9, 2023,
 4 Plaintiffs provided the other two estimates, stating they had inadvertently omitted them from
 5 the September 12 disclosure. These two estimates were prepared in or around August 2022,
 6 and Defendant does not waive the argument that they have been improperly withheld and
 7 untimely disclosed. However, the parties are deferring any discovery disputes on these
 8 points for the present. The parties' planned mediation is going forward on October 18, 2023,
 9 and they agree that adversarial activities should be minimized before the mediation date to
 10 avoid unnecessary expense.

11 The parties conferred, and Plaintiffs agreed with Defendant's request to jointly ask
 12 the Court to extend deadlines to address Plaintiffs' new witnesses and new damages
 13 evidence. Additionally, to have a fair opportunity to address the new evidence, trial –
 14 currently set for February 20, 2024 – needs to be reset.

15 The extensions requested are these:

- 16 A. Extension of the **expert disclosure deadline to January 18, 2024**, so
 17 Defendant can disclose expert(s) to address the three new estimates.
- 18 B. Extension of the **discovery deadline to March 18, 2024**, for these specific
 19 activities:
 - 20 1. Depositions of Plaintiffs' three new contractor witnesses;
 - 21 2. Continued depositions of Plaintiffs regarding the newly-disclosed
 22 evidence; and
 - 23 3. Complete the Rule 30(b)(6) deposition of nonparty Wilderness
 24 Roofing, whose designee was not properly prepared to answer
 25 questions on the topic of "repairs completed, repairs needed."
 - 26 4. Site visit of Plaintiffs' property by defense construction expert(s).

C. Extension of the **summary judgment deadline** to **April 18, 2024** because the new evidence may affect either party's arguments, making some of them moot if the parties file motions to meet the current October 23 deadline.

III. AUTHORITY

Once a district court has filed a pretrial scheduling order pursuant to Fed. R. Civ. P. 16, that rule's standards control. *See Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 607-08 (9th Cir. 1992). As such, a scheduling order "may be modified only for good cause and with the judge's consent." Fed. R. Civ. P. 16(b)(4). Where Plaintiffs produced key evidence for the first time after the expert disclosure deadline expired and approximately two weeks before the discovery cutoff, good cause exists to allow Defendant additional time to meet this evidence.

Under the standard articulated by the Ninth Circuit, the good cause necessary to modify a scheduling order "primarily considers the diligence of the party seeking the amendment." *Johnson*, 975 F.2d at 609. "Good cause" means scheduling deadlines cannot be met despite a party's diligence. *Id.* (citations omitted). Defendant cannot meet the expert disclosure deadline because Plaintiff produced all the evidence at issue after that deadline. Defendant cannot meet the discovery deadline because Plaintiffs produced some of the evidence after the deadline and some of it with too little time left in the discovery period to complete the necessary tasks. Defendant has been asking Plaintiffs for damages evidence since November 2022, the first opportunity to obtain discovery in this case. Plaintiffs do not dispute that Defendant has acted diligently in trying to address Plaintiffs' claims for damages.

IV. CONCLUSION

For these reasons, the parties jointly ask the Court to amend the case schedule for the particular purposes set forth above.

1 DATED: October 12, 2023

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22 *Attorneys for Defendant Nationwide Insurance*
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ORDER

It is so ordered. The Clerk is directed to issue a new scheduling order based on a new trial of August 12, 2024.

DATED this 12th day of October, 2023.

A handwritten signature in black ink, appearing to read 'Tiffany M. Cartwright', is written over a solid black horizontal line.

Tiffany M. Cartwright
United States District Court Judge